3935

BILL NO. S-78-01-18

SPECIAL ORDINANCE NO. S-19-78

AN ORDINANCE approving a contract with T-G Excavating Inc., for construction of Tillman Rd. - Hessen Cassel Rd. Water Main Adjustments.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the contract dated December 22, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and T-G Excavating Inc., for:

> Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the lowering of 2550± Ft. of 16" water main in Tillman Road and Hessen Cassel Road, for the lowering of 100± Feet of 8" water main on Autumn View Drive, and for the construction of 140± ft. of 6" water main pipe on Bauer Drive, all according to Fort Wayne Water Utility Drawing Y-10512, sheets 1 thru 7, and do everything required by the contract documents and this Agreement.

for a total cost of $79,932.00, to be reimbursed later from A R & S #33 Highway Funds, all as more particularly set forth in said contract which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on City Utilities (~~and the City Plan Commission~~ for ~~recommendation~~) and Public Hearing to be held after due legal notice, at the Council Chambers, ~~City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ____ M., E.S.T.

DATE: 1-10-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BURNS	X				
HINGA	X				
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 1-24-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-19-78 on the 24th day of January, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of January, 19 78, at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 31st day of January, 19 78, at the hour of 10:30 o'clock A. M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-01-18

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving a contract with T-G Excavating Inc., for construction of Tillman Rd. - Hessen Cassel Rd. Water Main Adjustments

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

DATE 1-24-78 CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

65-187-12 12/22/77

AGREEMENT # 77-2

FOR CONSTRUCTION OF TILLMAN RD. - HESSEN CASSEL RD. WATER MAIN ADJUSTMENTS

THIS AGREEMENT, made and entered into this 22 day of December 1977, by and between T - G EXCAVATING INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the lowering of 2550± ft. of 16" water main in Tillman Road and Hessen Cassel Road, for the lowering of 100± feet of 8" water main on Autumn View Drive, and for the construction of 140± ft. of 6" water main pipe on Bauer Drive, all according to Fort Wayne Water Utility Drawing Y-10512, sheets 1 thru 7, and do everything required by the contract documents and this Agreement.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay the Contractor for the performance of the contract the unit price sum of $79,932.00. In event the amount of work is increased or decreased by the Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by the Utility upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by the Utility to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspections. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works who shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted, and the entire balance of the contract sum shall be due and payable to the Contractor.

At the time said payment is due and payable, the Contractor shall furnish the Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid.

ARTICLE 5. GUARANTEE OF WORKMANSHIP

At the time the Completion Affidavit is filed, the Contractor shall furnish a one (1) year Guaranty Bond in favor of the City of Fort Wayne and in the amount of twenty-five (25%) percent of the total value of the final invoice.

ARTICLE 6. THE CONTRACT DOCUMENTS

The Instructions to Bidders, Specifications, Contractor's Proposal, and the Agreement form the Contact, and they are as fully a part of the Contract as if hereto attached or herein repeated. The following is an enumeration of these documents:

A. Instructions to Bidders for Contract #77-2

B. Contractor's Proposal dated Nov. 23, 1977

C. Supplemental Specifications for TILLMAN RD. - HESSEN CASSEL RD. WATER MAIN ADJUSTMENTS, and Detailed Specifications and Conditions for the installation of Transmission and Distribution Mains, Contract No. 77-2, and Fort Wayne Water Utility, Engineering Department Drawing No. Y-10512, Sheets 1 - 7.

D. Water Main Material Standards of the Fort Wayne Water Utility, Engineering Department, dated March 22, 1976, except as modified in the Supplemental Specifications.

ARTICLE 7. ADJUSTMENT OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Utility of the Owner, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 8. INDEMNITY

Contractor shall indemnify the Owner against any claim or loss incurred or arising out of the performance of the work as provided herein.

ARTICLE 9. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by its Mayor and Board of Public Works, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

T - G EXCAVATING, INC.

BY: Tom Stockamp, Pres.
Tom Stockamp, President

CITY OF FORT WAYNE, INDIANA

BY: Robert E. Armstrong
Robert E. Armstrong, its Mayor

ATTEST:

Ursula Miller
Ursula Miller, Clerk

BOARD OF PUBLIC WORKS:

Henry F. Wehrenberg
Henry F. Wehrenberg, Chairman

Ethel H. LaMar, Member

Max G. Scott
Max G. Scott, Member

APPROVED AS TO FORM AND LEGALITY:

Larry Burke
Larry Burke, Assoc., City Attorney

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1977.

Special Ordinance No. _____

CITY OF FORT WAYNE, INDIANA

IMPROVEMENT TO FORT WAYNE WATER UTILITY

PERFORMANCE AND GUARANTY BOND

KNOW ALL MEN BY THESE PRESENTS, that we *T-G Excavating, Inc.* (Contractor or Developer) as Principal, and the *Fidelity and Deposit Company of Maryland* (Insurance Company), a corporation organized under the laws of the State of *Maryland* *2/15/90* (State and Date), and duly authorized to transact business in the State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne, Indiana, an Indiana Municipal Corporation in the sum of $*79,932.00*, (value of work) for the payment whereof well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by those present. The condition of the foregoing obligation is such that

WHEREAS, the Principal has entered into contractor with the City or has applied for authority to to construct or cause to be constructed, a water main to become part of the City's water distribution system, which said water main is to be built and constructed according to plans and specifications prepared by or approved by City and known as the *Tillman Road-Hessen Cassel Road water main lowering*, B.O. #220-77 (Name of Project) and,

WHEREAS, the grant of authority by City to so construct such water main provides:

1. That said water main shall be completed according to said plans and specifications, and there shall be filed with the City, within thirty (30) days after completion, a Completion Affidavit.
2. Said Principal is required to agree to make such adjustments, modifications, and repairs as required by the City within thirty (30) days after notice, and,
3. To agree to maintain said water main for a period of one (1) year following written acceptance by the City of said water main, and,

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no change, modification, omission, or addition in and to the terms or conditions of said contract, plans, specifications, drawings, or profile, or any irregularity or defect in said contract or in the proceedings preliminary to the letting and awarding thereof shall in any way affect or operate to release or discharge said surety and the provisions and conditions of Chapter 258 of the Acts of the General Assembly of Indiana, of 1933, shall be, operate as, and become a part of the terms of this bond and said contract the same as if incorporated herein.

NOW, THEREFORE, if the principal shall perform all of the terms and conditions required of it by the consent to cause said water main to become a part of the City water distribution system, and shall for one (1) year after acceptance of said water main by City maintain said water main and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

T-G Excavating, Inc.
(Contractor or Developer)

BY: *Tom Stockemp, Pres.*
(Principal)

Fidelity and Deposit Company of Maryland
(Insurance Company)

BY: *Susan E. Lusk*
Surety *Attorney-in-Fact*

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said State, came *Thomas M. Stockamp*

as principal, and *Duane E. Lupke*

of the *Lupke-Rice Associates*

Attorney in Fact, for said *Fidelity and Deposit Company of Maryland* as surety, with both of whom I am personally acquainted, and acknowledged that they subscribed their signatures to the above and foregoing bond.

SUBSCRIBED TO, before me, a Notary Public, this *30th* day of *November*, 197*7*.

Paula M. Schneider
Notary Public

My Commission Expires:

2012-81

Power of Attorney

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR. , Vice-President, and PAUL E. ZACHARSKI , Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

"The President, or any one of the Executive Vice-Presidents, or any one of the additional Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto."

does hereby nominate, constitute and appoint Walter H. Lupke, Jr., Duane E. Lupke, Donald L. Coffey, Edward B. Rice, Walter E.Boose, Paula W. Schneider, Marvin P. Martin, Lowell K. Zelt and Virginia T. Axson, all of Fort Wayne, Indiana, EACH.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Walter H. Lupke, Jr., etal, dated November 6, 1975.

The said Assistant Secretary does hereby certify that the aforegoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 21st day of June, A.D. 19 76

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

SEAL

ATTEST: _____ By _____

Assistant Secretary *Vice-President*

STATE OF MARYLAND
CITY OF BALTIMORE } ss:

On this 21st day of June, A.D. 1976, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

NOTARY PUBLIC

_____

Notary Public Commission Expires July 1, 1978

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 30th day of November, 19 77

_____

Assistant Secretary

L1419—Ctf. 200832

3935

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR TILLMAN RD.-HESSEN CASSEL RD. WATER MAIN ADJ. #77-2

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS 2-78-01-18

SYNOPSIS OF ORDINANCE AGREEMENT FOR TILLMAN RD.-HESSEN CASSEL RD. WATER MAIN ADJUSTMENT #77-2, T-G EXCAVATING, INC. IN THE AMOUNT OF $79.932.00

(COPY OF CONTRACT ATTACHED)

EFFECT OF PASSAGE LOWERING OF 8" WATER MAIN ON AUTUMN VIEW, LOWERING OF 16" WATER MAIN ON TILLMAN & HESSEN CASSEL ROAD AND FOR THE CONSTRUCTION OF 6" WATER MAIN PIPE ON BAUER DRIVE

EFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT AND READJUST WATER MAIN PER AGREEMENT #77-2

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) $79,932.00 INITIALLY PAID BY CITY UTILITIES WITH REIMBURSEMENT LATER FROM A R & S #33 HIGHWAY FUNDS

ASSIGNED TO COMMITTEE

EP C.C.